

## Parole Hearing Process

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## Outline

- Proposed CRA Regulation
- Youth Offender (SB261) and Elderly Parole Update
- Decision Review Process
- Petition to Advance and Administrative Review Processes

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## Proposed CRA Regulation

- Overview
  - Why Amendments are Necessary
  - Timing and Scheduling of Comprehensive Risk Assessments (CRAs)
  - Discontinuation of Subsequent Risk Assessments (SRAs)

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### Why Amendments are Necessary

- Sherman-Bey v. Shaffer
- Johnson v. Shaffer (stipulated agreement)

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### Why Amendments are Necessary

- Sherman-Bey v. Shaffer
  - Prior subdivision (b): "Board of Parole Hearings psychologists **may** incorporate **actuarially derived and structured professional judgment approaches** to evaluate an inmate's potential for future violence."
  - Court found (1) permissive nature and (2) language "actuarially derived and structured professional judgment," was not sufficiently clear under the Administrative Procedure Act's (APA) clarity standard.
  - Language lacks clarity because not easily understood by or generally familiar to life inmates, who are directly affected by the regulation.

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### Why Amendments are Necessary

- Johnson v. Shaffer (stipulated agreement)
  - CRAs every three years; discontinuation of SRAs.
  - Pre-hearing process to raise factual errors contained in CRA.

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### Timing and Scheduling of CRAs

- **CRAs will be completed for:**
  - Initial parole consideration hearings
  - Subsequent parole consideration hearings, and
  - Subsequent parole reconsideration hearings (formerly 3000.1 hearings)
- A CRA will be completed if, on the date of the hearing, more than three years will have passed since the most recent risk assessment became final.
  - A CRA becomes “final” on the date it is first approved by the reviewing psychologist.

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### Timing and Scheduling of CRAs

- All regularly scheduled hearings should have an updated CRA.
- CRAs will not be completed for advanced hearings unless more than three years have passed since the prior CRA became final.
- CRAs will not be completed for initial parole reconsideration hearings.

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### Discontinuation of SRAs

- **Prior Cal. Code Regs., tit. 15, § 2240(c):**
  - This provision previously contained the requirement for CRAs every five years with SRAs for intervening hearings.
- New regulation deletes this provision and replaces it with a new provision, requiring CRAs every three years.
- This means SRAs will not be completed for any hearings.

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## Youth Offender (SB 261) Update

- **Timeline**
  - Senate Bill (SB) 261 was approved by the Governor and filed with the Secretary of State on October 3, 2015.
  - The Bill went into effect on January 1, 2016.

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## Youth Offender (SB 261) Update

- **Expansion of Qualifying Offenses to Those Committed Prior to Age 23**
  - SB 261 amended Penal Code sections 3051 and 4801(c) to redefine youth offenders as inmates who committed their “controlling offense” prior to age 23.
  - Inmate must still not otherwise be disqualified by any other provisions listed in Penal Code section 3051.

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### Youth Offender (SB 261) Update

- **Timing Requirements**

- SB 519 amended the board's timing requirements originally proposed in SB 261 to conduct all parole consideration hearings for youth offenders who became newly eligible for hearings in accordance with Penal Code section 3051.1.

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### Youth Offender (SB 261) Update

- **Timing Requirements – Indeterminate Life Term Inmates**

- Penal Code section 3051.1(a) requires the board to provide a parole consideration hearing by January 1, 2018, for all indeterminately sentenced youth offenders who became newly eligible for a hearing for the first time on January 1, 2016 as a result of SB 261.

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### Youth Offender (SB 261) Update

- **Timing Requirements – Determinate Term Inmates**

- Penal Code section 3051.1(b) requires the board to provide a parole consideration hearing by December 31, 2021, for all youth offenders sentenced to only determinate terms who became newly eligible for a hearing for the first time on January 1, 2016 as a result of SB 261.
- The board is further required to provide consultations for all determinately sentenced youth offenders by January 1, 2018.

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## Youth Offender (SB 261) Update

### • Term Calculations

- The board will conduct term calculations for all indeterminate sentenced inmates, including qualified youth offenders, as a result of the In re Butler settlement.

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## Elderly Parole

### • Historical

- Elderly Parole Program established as a result of the Three Judge Panel order in the *Plata/Coleman* class action lawsuit to reduce prison overcrowding.

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## Elderly Parole

### • Eligibility

- Inmates who are 60 years or older and who have been continuously incarcerated for 25 years or more.
- Any break in incarceration resets an inmate's clock for elderly parole eligibility.

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## Elderly Parole

### • Timing and Scheduling of Hearings

- If an inmate's EPED (elderly parole eligibility date) is the controlling date, the inmate will be scheduled for a parole consideration hearing within six months of EPED.
- An inmate who is already in the hearing cycle does not receive a new hearing by virtue of qualifying for elderly parole (not a separate hearing track).

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## Elderly Parole

### • Special Consideration Requirement

- The board will give special consideration to an eligible elderly parole inmate's advanced age, long-term confinement, and diminished physical condition, if any.

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## Elderly Parole

### • Special Consideration is Given for a Qualified Elderly Inmate During:

- Parole Consideration Hearings
- Petition to Advance Process
- Administrative Review Process

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## Elderly Parole

### • Risk Assessments

- Qualified elderly parole inmates will receive a risk assessment which specifically address how the inmate's advance age, long-term confinement, and diminished physical condition, if any, may impact the inmate's potential risk for future violence.

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## Elderly Parole

### • Utilizing the Elderly Parole Factors

- Attorneys should be aware of the effects of each qualified elderly inmate's advance age and diminished physical condition.
- These factors can be utilized to advocate that the inmate presents a diminished potential risk for future violence.

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## Elderly Parole

### • Term Calculations

- The board will conduct term calculations for all indeterminately sentenced inmates, including inmates who qualify for the Elderly Parole Program, as a result of the In re Butler settlement.

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## Decision Review Process

- **Review Authority**
  - Proposed decisions made at hearings for prisoners serving a sentence of life with the possibility of parole may be reviewed by the chief counsel or a designee.
    - California Code of Regulations, title 15, section 2041, subdivision (h)
- **Grants**
  - Grants of parole shall be reviewed by the chief counsel or a designee.
- **Denials**
  - A random sample of parole denials, as determined by the board, shall be reviewed by the chief counsel or a designee.
    - California Code of Regulations, title 15, section 2041, subdivision (h)

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## Decision Review Process

- **Decision Review Standard**
  - The panel's decision shall become final "unless the board find that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing."
    - Penal Code section 3041, subdivision (b)
    - California Code of Regulations, title 15, section 2042

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## Decision Review Process

### • How is it Invoked?

- An inmate, or an inmate's attorney, may write to the board requesting decision review and including the reason for the request.
- Must be requested before the proposed decision becomes final.

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## Petition to Advance (PTA) Process

### • How is a PTA Invoked?

- An inmate may request that the board exercise its discretion to advance a hearing following a denial of parole or stipulation (with a Marsy's law denial length) to an earlier date, by submitting a written request to the board.
- BPH Form 1045-A

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## Petition to Advance (PTA) Process

### • Standard

- A change in circumstances or new information that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of the inmate.

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## Petition to Advance (PTA) Process

### • Potential Outcomes

- Approved
  - If the petition is approved, the inmate is either placed on the next available calendar or the inmate's denial length will be reduced (to a lesser Marsy's law length denial).
- Denied
  - If the petition is denied, the inmate's current denial length remains in tact.

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## Petition to Advance (PTA) Process

### • Limitation

- The board will only consider a subsequent PTA three years after the previous PTA was decided on the merits.

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## Petition to Advance (PTA) Process

- **Youth Offender/Elderly Parole Eligibility and PTA**

- A newly eligible youth offender or elderly parole status constitutes a change in circumstances/new information in support of a PTA.
- However, an inmate must still establish a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration.

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## Administrative Review (AR) Process

- **Overview**

- The board typically conducts administrative review on select three-year denials.

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## Administrative Review (AR) Process

- **Standard**

- Advancing a hearing date requires a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of the inmate.

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## Administrative Review (AR) Process

### • Screening Criteria

- A hearing will not be advanced if:
  - Inmate has filed a PTA since his/her last hearing.
  - Violent rules violation since last hearing.
  - High risk assessment score.
  - Presence of new negative confidential information.
  - An intervening hearing via court order or en banc referral.

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Questions?

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